

Message Text

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TAGS: CGEN: (HENDRIX, JAMES)

SUBJECT: EAGLE VOYAGER CASE (U.S. V. HENDRIX)

SUMMARY: ASSISTANT U.S. ATTORNEY DAWSON INFORMED DEPT. THAT HENDRIX TRIAL IS SCHEDULED FOR JUNE 30, AND THAT TESTIMONY WILL PROBABLY BEGIN ON JULY 7. DAWSON HOPEFUL THAT TESTIMONY OF MAYA PEYSEKHAM WILL BE AVAILABLE, BUT NEEDS TO KNOW WHETHER SHE WILL TESTIFY IN PERSON OR BY DEPOSITION. FURTHER, DEPT. IS INFORMED THAT CONOFFS WILLEMS AND DARBYSHIRE WILL BE CALLED TO TESTIFY AT TRIAL O/A JULY 7.

1. JUSTICE ADVISES THAT HENDRIX TRIAL SET FOR MONDAY, JUNE 30; WITNESSES WILL PROBABLY BE CALLED BEGINNING JULY 7.

2. ASST. U.S. ATTORNEY DAWSON IS ANXIOUS TO KNOW WHETHER WITNESS MAYA PEYSEKHAM WILL BE ALLOWED TO TRAVEL TO U.S. TO TESTIFY. DAWSON HAS EXPLAINED THAT DEFENDANT'S CLAIM OF INSANITY WILL BE CENTRAL ISSUE IN CASE, AND THAT WITNESS IS IN UNIQUE POSITION TO SHED LIGHT ON HENDRIX' RATIONALITY, COHERENCE, BEHAVIOR, ETC. DURING THE CRITICAL PERIOD IMMEDIATELY BEFORE THE MURDER WAS COMMITTED

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3. ASST. U.S. ATTORNEY DAWSON (IN COMMON WITH MOST TRIAL ATTORNEYS) WOULD PREFER TO PUT A LIVE WITNESS BEFORE

THE JURY RATHER THAN READ A TRANSCRIPT OF A DEPOSITION. HOWEVER, IF A DEPOSITION IS ALL THAT IS AVAILABLE, HE WILL HAPPILY SETTLE FOR IT BECAUSE OF THE IMPORTANCE OF THE TESTIMONY.

4. IT SHOULD BE NOTED, THOUGH, THAT THE TRANSCRIPT OF THE DEPOSITION WILL ONLY BE ADMISSIBLE IF IT IS CONDUCTED ON ORAL EXAMINATION BY THE ATTORNEYS FOR BOTH SIDES BEFORE A CONOFF OR A PERSON AUTHORIZED TO ADMINISTER OATHS UNDER SOVIET LAW. THE REPLIES TO QUESTIONS SUBMITTED BY MEANS OF LETTER ROGATORY WOULD NOT BE ADMISSIBLE IN A CRIMINAL PROCEEDING BECAUSE OF THE DEFENDANT'S RIGHT UNDER THE SIXTH AMDT. TO THE U.S. CONSTITUTION TO CONFRONT THE WITNESSES AGAINST HIM. CONFRONTATION IS CONSTRUED TO MEAN FULL AND OPEN CROSS EXAMINATION UNDER OATH, AND USUALLY IN COURT. CROSS EXAMINATION BY MEANS OF WRITTEN QUESTIONS SUBMITTED BEFORE THE WITNESS'S ANSWERS TO THE DIRECT QUESTIONS ARE KNOWN FALLS SHORT OF THE CONSTITUTIONAL RIGHT TO CONFRONT ADVERSE WITNESSES AND RENDERS THE TESTIMONY INADMISSIBLE.

5. DEPARTMENT ADDS THAT, IN A SIMILAR SITUATION, U.S.G. WOULD PERMIT A CITIZEN OF THE U.S. TO GO TO THE U.S.S.R. TO TESTIFY. (N.B. THIS DOES NOT MEAN U.S.G. WOULD COMPEL A WITNESS TO TRAVEL ABROAD FOR THE PURPOSE OF GIVING TESTIMONY). DEPT. HAS ALREADY MENTIONED THAT U.S.G. WOULD HAVE NO OBJECTION TO THE TAKING OF TESTIMONY BY FOREIGN OFFICIALS IN THIS COUNTRY IN A SIMILAR SITUATION. IN FACT, PROVISION IS MADE FOR SO DOING IN U.S. LAW (28 U.S.C.1728B).

6. DEPARTMENT APPRECIATES THAT THIS REQUEST IS WITHOUT PRECEDENT, BUT IS HOPEFUL THAT IT WILL BE ACTED UPON FAVORABLY BY THE SOVIET AUTHORITIES IN THE INTEREST OF SEEING THAT JUSTICE IS DONE.

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7. A.U.S.A. DAWSON ADVISES THAT CONOFFS LEONARD WILLIAMS AND ANN DARBYSHIRE WILL BE CALLED AS WITNESSES BY PROSECUTION TO TESTIFY CONCERNING DEFENDANT'S DEMEANOR PRIOR TO HIS RETURN TO U.S. DAWSON WILL REQUEST PRESENCE OF CONOFFS BY LETTER TO DG THIS WEEK, AND SCA INTENDS TO RECOMMEND FAVORABLE ACTION ON THE REQUEST. FUNDING INFORMATION AND ANY NECESSARY ORDERS WILL BE TRANSMITTED SHORTLY. KISSINGER

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